

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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CC:ITA:05

Telephone Number:

Refer Reply To:
PLR-104096-10

Date:
April 07, 2010

LEGEND:

A =

B =

State =

Dates:

1 =
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Dear :

This responds to your letter and submissions of December 30, 2009, filed on behalf of A, above (the "Taxpayer"), in which you requested a private letter ruling relating to the late-filing of a Form 8716, *Election To Have A Tax Year Other Than a Required Tax Year*. Specifically, you requested that the Taxpayer's late-filed Form 8716 be considered timely filed under the authority contained in section 301.9100-3 of the Procedure and Administration Regulations. We are pleased to address your concerns.

FACTS

The information submitted indicates that the Taxpayer was formed under the laws of State on Date 1, is a partnership for federal income tax purposes, and uses an overall cash receipts and disbursements method of accounting. The Taxpayer was formed solely to hold a membership interest in B. All of the partners of the Taxpayer are individuals that use the calendar year as their taxable year.

LAW AND ANALYSIS

Section 441(a) provides that taxable income is computed on the basis of the taxpayer's taxable year. Section 441(b) and section 1.441-1(b)(1) of the Income Tax Regulations provide that the term "taxable year" generally means the taxpayer's annual accounting period, if it is a calendar or fiscal year, or, if applicable, the taxpayer's required taxable year. In the case of a partnership, the required taxable year is the taxable year determined under section 706 and section 1.706-1. Section 1.441-1(b)(2)(i)(G).

Under section 706(b)(1)(B)(i), a partnership's required taxable year is the majority interest taxable year defined in section 706(b)(4), unless the taxpayer elects under section 444 to use a taxable year other than its required taxable year. Section 706(b)(4) provides, in general, that the majority interest taxable year is the taxable year (if any) which, on each testing day, constitutes the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

Section 1.706-1(b)(7) provides, in relevant part, that a newly-formed partnership may adopt, in accordance with section 1.441-1(c), its required taxable year or a taxable year elected under section 444 without the consent of the Commissioner.

Section 444(a) provides that, except as otherwise provided in section 444, a partnership may elect to have a taxable year other than its required taxable year. Section 444(b)(1) and (2) provide that an election under section 444(a) may be made only if the deferral period of the taxable year elected is not longer than the shorter of three (3) months or the deferral period of the taxable year being changed. The term "deferral period" generally refers to the number of months between the beginning of the entity's taxable year and the close of the first required taxable year ending within such taxable year. Section 444(b)(4).

Section 1.444-3T(b) of the temporary Income Tax Regulations provides that a section 444 election must be made on Form 8716. Section 1.444-3T(b)(1) provides, among other requirements, that Form 8716 must be filed by the earlier of (i) the 15th day of the fifth month following the month that includes the first day of the tax year for which the election will first be effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the section 444 election.

Section 301.9100-1 sets forth rules respecting the granting of extensions of time for making certain elections. Under these rules, the Commissioner in his discretion may grant a reasonable extension of time to make a regulatory election under Subtitle A, provided the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections, including elections to use other than the required tax year under section 444. If the provisions of section 301.9100-2 do not apply to the taxpayer's situation, as in the instant case, the provisions of section 301.9100-3 (Other extensions) may apply.

Section 301.9100-3 sets forth standards that the Commissioner will employ in determining whether to grant discretionary relief in situations that do not meet the requirements of section 301.9100-2. The standards applied are whether the taxpayer acted reasonably and in good faith in the matter, and whether the granting of relief will prejudice the interests of the government. Generally, a taxpayer will be deemed to have acted reasonably and in good faith where, for example, the taxpayer reasonably relied on a qualified tax professional, and that professional failed to make, or advise the taxpayer to make, the election at issue.

In the instant case, the Taxpayer's Form 8716 electing to use a taxable year ending September 30 was due on or before Date 2. However, the Taxpayer, relying upon the advice of a qualified tax professional, did not file the Form 8716 until on or about Date 3, whereupon it was rejected by the Internal Revenue Service as untimely.

CONCLUSION

Based on the information submitted and representations furnished by the Taxpayer, we conclude that the Taxpayer acted reasonably and in good faith in respect of this matter, and that the late filing was not due to any lack of due diligence or prompt action on the part of the Taxpayer. We have further determined that the granting of relief in this case will not prejudice the interests of the government within the meaning of section 301.9100-3(c)(1). Accordingly, the requirements of section 301.9100-3 for the granting of relief have been satisfied.

Within 45 days of the date of this ruling, the Taxpayer should refile with the IRS Cincinnati Service Center (Attn: Entity Control) a Form 8716 electing to use a tax year ending September 30, effective for its first taxable year ending Date 4. A copy of this letter ruling should accompany such submission, and the Taxpayer should type or print at the top of the form: "Filed Under Section 301.9100-3 of the Regulations."

This ruling is further conditioned on the Taxpayer complying with section 1.7519-1T(a)(2), which provides, in relevant part, that for each taxable year that a partnership has an election under section 444 in effect, the partnership must (i) file a return as provided in section 1.7519-2T(a)(2), and (ii) make any required payment as provided in section 1.7519-2T.

Except for the specific ruling above, which is restricted to the filing of Form 8716, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code or regulations that may be applicable thereto. This letter ruling is based on facts and representations provided by the Taxpayer and its authorized representatives, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with the Taxpayers' permanent records.

Pursuant to a power of attorney currently on file with this office, copies of this letter ruling are being sent to the Taxpayer's authorized representatives. A copy of this letter is also being sent to the Taxpayer's appropriate Service Center campus.

This ruling is directed only to the Taxpayers who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Associate Chief Counsel
(Income Tax & Accounting)

/s/ Jeffrey Rodrick

Jeffrey Rodrick
Senior Technician Reviewer,
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Enclosures:

Copy of this letter
Copy for section 6110 purposes